Southland Knitwear, Inc. and Metropolitan Industries, Inc. *and* Knitgoods Workers' Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO and Local 413, Office and Professional Employees International Union, AFL-CIO, CLC, Party to the Contract

Southland Knitwear, Inc. and Metropolitan Industries, Inc. *and* Knitgoods Workers' Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO. Cases 29-CA-7765 and 29-CA-8096

March 4, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 29, 1981, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding.[1] Thereafter, the Respondent filed exceptions and a motion for a trial *de novo*,[2] and the General Counsel and Knitgoods Workers' Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO, filed briefs in opposition to the Respondent's motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[3] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[4]

[1] On November 4, 1981, the Board issued an Order in the above-entitled proceeding adopting in the absence of exceptions the findings, conclusions, and recommendations of the Administrative Law Judge. Subsequently, the Respondent requested an extension of time to file exceptions, which was granted by the Board. After receiving the Respondent's exceptions and motion for a trial *de novo*, the Board accepted the exceptions and motion and rescinded its Order of November 4, 1981.

[2] Inasmuch as we find no merit in the Respondent's contention that it was denied due process because it was not represented by counsel at the hearing, we deny the Respondent's motion for a new trial.

[3] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[4] Inasmuch as the Administrative Law Judge found that the Respondent violated Sec. 8(a)(1), (2), and (3) of the Act by discriminatorily laying off certain employees and refusing to recall others, we shall modify the recommended Order to require the Respondent to cease and desist therefrom.

Although the Administrative Law Judge included a broad cease-and-desist order in the notice, he failed to include such a provision in his recommended Order. Inasmuch as we find that the Respondent has committed egregious and widespread unfair labor practices, we shall modify the recommended Order to provide for a broad cease-and-desist order requiring the Respondent to cease and desist from violating the Act "in any other manner." See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Southland Knitwear, Inc. and Metropolitan Industries, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraphs 1(d), (e), and (f):

"(d) Laying off employees because they support Local 155 or reject Local 413 as their collective-bargaining representative.

"(e) Laying off employees in order to prevent Local 155 from organizing them.

"(f) Refusing to recall employees because of their activities on behalf of Local 155 or in opposition to Local 413."

2. Insert the following as paragraph 1(g):

"(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT take Local 155 leaflets from our employees and tear them up.

WE WILL NOT admonish employees not to speak with Local 155 representatives nor claim that the Local 155 representative is from the Mafia.

WE WILL NOT keep employees' union activities under surveillance.

WE WILL NOT solicit or force employees to sign Local 413 authorization cards.

WE WILL NOT threaten employees with loss of employment if they fail to sign Local 413 authorization cards.

WE WILL NOT give the impression of surveillance of employees' activities on behalf of Local 155.

WE WILL NOT threaten to close the factory if the employees try to bring in Local 155.

WE WILL NOT interrogate employees concerning their activities on behalf of Local 155.

WE WILL NOT interfere with the rights of employees to discuss their union preferences and activities.

WE WILL NOT tell employees to advise management if they hear anyone discussing Local 155.

WE WILL NOT promise employees various benefits in return for talking to other employees in support of Local 413.

WE WILL NOT promise or grant employees benefits for abandoning their support for Local 155.

WE WILL NOT put into effect or enforce the 1977 collective-bargaining agreement between Local 413 and ourselves.

WE WILL NOT deduct dues for Local 413 from the paychecks of our employees.

WE WILL NOT lay off employees because they support Local 155 or reject Local 413 as their collective-bargaining representative.

WE WILL NOT lay off employees in order to prevent Local 155 from organizing them.

WE WILL NOT refuse to recall employees because of their activities on behalf of Local 155 or in opposition to Local 413.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer all discriminatorily laid-off employees, including Maria Baez, Juana Baez, the mother of Maria Baez, and all employees laid off on February 13, 1980, immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or any other rights or privileges, and make them whole for any loss of pay, with interest, that they may have suffered by reason of our discrimination against them.

WE WILL reimburse all affected employees for dues deducted for Local 413, with interest.

All our employees are free to become or remain, or refrain from becoming or remaining, members of a labor organization.

SOUTHLAND KNITWEAR, INC. AND METROPOLITAN INDUSTRIES, INC.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge: This case was heard before me in Brooklyn, New York, on November 3, 4, and 5, 1980.[1] The original charge in Case 29-CA-7765 was filed on February 7, amended on February 12, and amended once again on February 28. The complaint in Case 29-CA-7765 was issued on April 30, alleging that Southland Knitwear, Inc. and Metropolitan Industries, Inc., herein called Southland and Metropolitan, respectively, and Respondent, collectively, violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act, as amended, by interrogating employees concerning their membership in, activities on behalf of, and sympathies for Knitgoods Workers' Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO,[2] herein called Local 155; threatening employees with discharge and other reprisals if they failed to sign authorization cards for Local 413, Office and Professional Employees International Union, AFL-CIO, CLC, herein called Local 413; threatening employees that Respondent would cease operations and would take other actions against them if they became or remained members of or gave assistance or support to Local 155; offering, promising, and granting to employees more favorable work assignments and other benefits and improvements in working conditions and terms of employment in order to induce them to sign Local 413 authorization cards and to induce them to become or remain members of Local 413 and to give assistance or support to it; keeping under surveillance the meeting places, meetings, and activities of Local 155 and the concerted activities of its employees conducted for the purpose of collective bargaining and other mutual aid and protection; urging and soliciting employees to sign cards designating Local 413 as their representative for collective-bargaining purposes, to join Local 413, and to sign checkoff cards authorizing the deduction from their wages of dues and other moneys to be paid to Local 413; attempting to effectuate and enforce for the first time, as

[1] All dates are in 1980 unless otherwise noted.
[2] The Charging Party.

of February 5, a collective-bargaining agreement[3] between Metropolitan and Local 413 which had originally been executed by said parties on or about March 31, 1977, but which had not been maintained or enforced since its execution, notwithstanding the fact that Local 413 did not as of February 5, nor at any other time thereafter, represent an uncoerced majority of the employees covered by said agreement; requiring employees covered and affected by the provisions of the Metropolitan/Local 413 agreement to pay moneys, including dues and initiation fees, to Local 413; deducting moneys, including dues and initiation fees, from the wages of employees and transmitting such moneys to Local 413 or holding them in escrow for the benefit and account of Local 413 pursuant to said agreements; and laying off certain employees and refusing to reinstate them because they joined and assisted Local 155 and engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection or because said employees refrained from forming, joining, or assisting Local 413. On May 19, Respondent filed its answer to the complaint in Case 29-CA-7765, admitting certain of the allegations but denying the commission of any unfair labor practices.

On June 19, the charge in Case 29-CA-8096 was filed by Local 155. The complaint in said case was issued on July 31, alleging violations of Section 8(a)(1) and (3) in that employees of Respondent as of July 14 undertook an unfair labor practice strike against Respondent and that thereafter Respondent offered and promised one employee that it would obtain employment for her with another employer if she would abandon her membership in and activities on behalf of Local 155, abandon the strike, and cease picketing at Respondent's plant; refused reinstatement to an employee because she joined and assisted Local 155; and refused reinstatement to a second employee unless she abandoned her membership in and activities in support of Local 155. On August 19 an order consolidating cases and notice of hearing issued consolidating Case 29-CA-7765 and Case 29-CA-8096 for hearing. On October 13 Respondent filed a one-line general denial which, though misciting the case number, I take to be a denial of the allegations contained in Case 29-CA-8096.[4]

All parties were represented at the hearing and were afforded full opportunity to be heard and to present evidence and argument. Upon the entire record, upon my observation of the demeanor of the witnesses, and after giving due consideration to the oral arguments of the parties, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Southland and Metropolitan are both New York corporations which maintain their principal offices and places of business in Brooklyn, New York, where they are engaged in the manufacture, sale, and distribution of knitwear goods and related products. These corporations are affiliated businesses with common officers, ownership, directors, and operators, and constitute a single integrated business enterprise. The said directors and operators formulate and administer a common labor policy affecting the employees of said Companies. During the past year, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Brooklyn plant knitwear goods and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were delivered to its plant in interstate commerce directly from States of the United States other than the State in which it is located. Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 155 and Local 413 are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Agency*

It is admitted that Jacob (herein called Jack) Jacobowitz is, and has been at all times material, the president and manager of Respondent, acting on its behalf, and is and has been an agent thereof. It is alleged that Beirel and Leibish Jacobowitz, the sons of Jack Jacobowitz, are, and have been at all times material, agents of Respondent, acting on its behalf, and supervisors within the meaning of Section 2(11) of the Act. This is denied. It is similarly alleged that Sylvia Jacobowitz, the daughter of Jack Jacobowitz, is, and has been at all times material, employed as an office secretary by Respondent, acting on its behalf, and is an agent thereof. This, too, is denied.

Counsel for the General Counsel put in evidence the testimony of several witnesses who described how Beirel Jacobowitz interviewed and hired employees, gave orders to and effectively directed employees on the job, and solved their problems and answered their questions. Similarly, there is evidence that Beirel Jacobowitz also reassigned or transferred employees from one job to another and, upon request, granted time off, and also terminated employees. Beirel Jacobowitz did not testify and, although Jack Jacobowitz did testify, he offered no evidence to contradict the testimony of counsel for the General Counsel's witnesses. I conclude that Beirel Jacobowitz, during all relevant times herein, is and was a supervisor under the Act and an agent of Respondent.

Leibish Jacobowitz, the other son of Jack Jacobowitz, sometimes signed paychecks for Respondent. He was the older of the two sons, who, if Beirel Jacobowitz could not solve a problem, was called upon to solve the more difficult questions for the employees who looked upon him as their superior. He, like Beirel Jacobowitz, gave orders to the employees. Leibish Jacobowitz did not tes-

[3] The agreement contains, *inter alia*, provisions which require membership in Local 413 as a condition of employment.

[4] Certain inconsistencies between the admissions contained in the first answer and the general denial in the second answer were resolved at the hearing through testimony during which admissions were agreed upon to cover similar allegations in both answers.

tify, nor did Jack Jacobowitz or any other witness offer evidence to support Respondent's contention that Leibish Jacobowitz was neither a supervisor under the Act nor an agent of Respondent. In any case, since Leibish Jacobowitz is the son of the owner, he enjoys a special status with Respondent which, when considered in light of his overt participation along with his father in events described *infra*, indicates an agency relationship. I therefore find that his activities are attributable to Respondent.[5]

Sylvia Jacobowitz, daughter of Jack Jacobowitz, is in charge of payroll[6] and has her own office.[7] She receives the production tickets from the piecework employees each week and determines the amount due them. If there are any questions about the proper amount of compensation or if any employee reports late for work, the employee involved speaks to Sylvia Jacobowitz about the problem and she settles the matter. Sylvia Jacobowitz also writes and then distributes the paychecks to the employees each week. Sylvia Jacobowitz' name does not appear on the payroll sheets, nor does that of Beirel or Leibish Jacobowitz. On at least one occasion she interviewed an applicant for employment who was then told by Beirel Jacobowitz to report for work the following Monday.

I find that Sylvia Jacobowitz, as the daughter of the owner of Respondent, enjoys a special status which, when considered in light of her overt concerted involvement with the other members of the Jacobowitz family in activities which I shall find, *infra*, violative of the Act, made her activities attributable to the Respondent.[8]

B. *Background*

Respondent, which operates a knitting mill on Spencer Street in Brooklyn both under the name of Metropolitan Industries, Inc. and Southland Knitwear, Inc., once operated under the name of High Point Hosiery.[9] As Highpoint Hosiery, Respondent, in 1971 entered into a collective-bargaining agreement with Local 413, Office and Professional Employees International Union, AFL-CIO, CLC. The agreement, signed by Jack Jacobowitz, the owner of the Company, on behalf of Respondent and by Manuel Paya, Local 413's president, on behalf of the Union, covered both production and office employees and contained an expiration date of August 14, 1974. The agreement was signed, according to Paya, following an organizational campaign and voluntary recognition.[10]

Before the expiration of the 1971 collective-bargaining agreement Highpoint Hosiery moved away, apparently without notifying Local 413 that it was doing so. In the words of Paya, the Company disappeared.[11] Though Paya testified that the collective-bargaining agreement had been enforced before Respondent moved, no evidence was offered to support Paya's testimony and it seems highly unlikely that the Company could successfully, completely disappear without a trace if there had been a viable collective-bargaining relationship between parties with the employees receiving active representation from Local 413.[12] Certainly, one of the union member employees would have notified his representative of the move either immediately before or after it occurred if he were affected in any way by the move.

In 1973 Respondent, now known as Metropolitan Industries, Inc., moved to its present location on Spencer Street. According to Paya, when he found out where Respondent was located, he went to its place of business, got more cards signed, and negotiated a new contract with Jack Jacobowitz on March 31, 1973. However, no employees testified in support of Paya's statement, no cards were offered in evidence, and Paya could not recall how many cards were signed[13] nor how many people were in the unit. No records were produced as substantiating evidence as to the signing of additional cards. The old contract still had about a year and a half to run at the time the 1973 agreement was negotiated and there appears in the record no satisfactory reason for the parties' having deemed it necessary to prematurely execute a new agreement.[14] Nevertheless, the new contract covering the same unit of employees was executed and a new expiration date of November 1, 1976 was agreed upon.

When Paya was asked whether the 1973 contract was in full force and effect through its expiration date, he stated that he was unable to answer the question. Jack Jacobowitz, on this subject, stated in his affidavit that until August 1974 the employees paid union dues and received benefits under the contract and that he contributed to the Union very little during this period, but that after that date he could not recall whether employees paid dues or if he contributed to the Union. When called upon to testify at the hearing, however, Jacobowitz could not remember what he had said in his affidavit. Jacobowitz' testimony contributed very little toward shedding light on the history of bargaining between Respondent and Local 413.

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[5] *Columbia Building Materials, Inc.*, 239 NLRB 1342 (1979), affd. 624 F.2d 193 (9th Cir. 1980).

[6] Jack Jacobowitz testified that he does not look at the payroll records at all.

[7] Sylvia Jacobowitz shares this office with her father.

[8] *Columbia Building Materials, supra.*

[9] Highpoint Hosiery was located at the time at Park Avenue, Brooklyn.

[10] No authorization cards nor other evidence was offered to support Paya's statement that an organizational campaign had been conducted. Paya testified that, although Jacobowitz was initially reluctant to sign the agreement, he later called Paya and agreed to sign with the Union when "he found out the girls wanted a union." Which union the employees wanted is not clear from the testimony. Jacobowitz could not recall whether he was shown any authorization cards.

[11] The precise date of Respondent's so-called disappearance is not at all clear from Paya's testimony but most probably was at some time during the life of the first contract.

[12] When asked if the employees paid union dues and received benefits under the contract and whether he contributed money to Local 413, Jack Jacobowitz testified vaguely, "Probably. I don't remember '71. I believe I paid them." He offered no records to support his testimony.

[13] Jacobowitz testified that he could not remember being shown any cards in 1973. He also testified elsewhere that maybe he had been shown cards.

[14] Though Paya testified that an increase in the number of employees made the execution of the new contract necessary, the old contract contained a provision covering such a contingency.

In 1977 a new contract[15] was signed, dated March 31, 1977, containing an expiration date of November 1, 1980. Paya's name again appears on the collective-bargaining agreement as does the name of Jack Jacobowitz.[16] According to Paya, before signing the 1977 contract he obtained additional signed authorization cards. He did not explain in his testimony, however, why he considered it necessary to do so, nor could he, when asked, state how many cards were obtained. No cards were offered in evidence to substantiate Paya's claim that additional cards were received, nor were any union records offered for this purpose. Later in his testimony, Paya was shown a copy of his affidavit in which he denied soliciting any additional union authorization cards before signing the 1977 contract. When faced with the statement contained in the affidavit, Paya reversed himself and denied that any new cards were solicited in 1977.[17]

Paya was examined with regard to the question of whether or not the 1977 collective-bargaining agreement was ever enforced. In answer to this question Paya replied that he did not think it was enforced. More explicitly, Paya testified that he had never been notified by anyone from the Company that any employees had ever failed to join the Union after being employed for 30 days as required by the union-security clause of the contract. Similarly, he testified that he never requested Respondent to discharge any employee for failure to become a member of Local 413 after 30 days of employment as required by the agreement because he "didn't enforce the contract too much." When asked how many of Respondent's employees had become members of Local 413 before 1980, Paya was unable to answer because he would have had to count the cards in order to be able to answer the question. When asked if he had copies of the authorization cards with him, Paya replied that he did not. When it was pointed out that authorization cards had been subpenaed and that Paya had failed to bring them despite the subpena, and the subpena was then put in evidence, counsel for the General Counsel requested that an adverse inference be taken that no such authorization cards existed. No authorization cards were submitted at the time or thereafter, and I, therefore, in accordance with standard procedures and the request of counsel for the General Counsel, draw the inference suggested that no such signed authorization cards were ever obtained by the Union from Respondent's employees.

Paya was examined with regard to whether or not employees of Respondent received certain benefits in accordance with the provisions of the 1977 contract. Paya testified that employees, "to his recollection," received time and a half for overtime, but so testified on the basis of the fact that no employees complained to him about not being paid time and a half. Moreover, when asked if any employees complained to him about any violations of the contract, Paya replied in the negative. He then went on to admit that he had never processed a grievance under the 1977 contract, and had never checked the payroll to see that the employees were properly paid, but had been told by Respondent that "they *were going* to pay" overtime (emphasis supplied). He also testified that, although he visited the shop once a month and spoke to employees there,[18] none of them complained to him, and, since they seemed happy, he assumed that they were being paid properly under the contract. Paya stated that when he visited the shop he sometimes placed notices on the bulletin board which is located outside the office in the hall. Although Paya said that there was a shop steward in the shop, he was unable to identify him by name, explaining, "I don't know, I didn't go to the shop for a long time. I told you before they disappeared."[19] Paya stated that he "used to" talk with the shop steward once a month. The implication is that there had not been a shop steward at the shop for several years; that is, since Respondent's disappearance.

Paya was asked whether, as required by the 1977 collective-bargaining agreements, Respondent paid $11.50 per month per employee into the health and welfare fund. Paya replied that it was not his job to keep track of such matters but that he had never received any complaints on the subject matter so therefore the payments had probably been made. After Paya made this statement, counsel for the General Counsel reminded him that records concerning contributions to the health and welfare fund had been subpenaed, and asked him if he had complied with the subpena. Paya admitted that he had not, whereupon counsel for the General Counsel moved that an adverse inference be taken that no such records exist because no such contributions had ever been made. No records were thereafter produced and I hereby take the inference moved. I find that Respondent made no contributions to the health and welfare fund as required by the collective-bargaining agreement.

Counsel for the General Counsel then examined Paya concerning the requirements contained in the 1977 agreement for periodic wage increases. Paya could not recall what the collective-bargaining agreement said concerning periodic wage increases and did not know what, if any, periodic wage increases had been granted to employees as prescribed by the contract.

When Paya was asked pointblank by counsel for the General Counsel whether the 1977 collective-bargaining agreement had ever been enforced, Paya stated that it had indeed been enforced *in the beginning*. When counsel for the General Counsel pursued the matter and asked Paya if he were sure that it had been enforced, Paya

[15] The 1977 collective-bargaining agreement contains no unit description.

[16] Though the name of Jack Jacobowitz appears on the document, Paya testified that Leibish Jacobowitz, Jack's son, actually negotiated the contract. Jack Jacobowitz, on the other hand, testified that he negotiated the contract himself. Leibish Jacobowitz did not testify.

[17] Jack Jacobowitz testified that he could not recall whether he was presented with additional authorization cards at the time the 1977 contract was negotiated.

[18] Paya clarified his testimony later by stating that when he visited the shop and spoke to employees on these occasions, he only spoke to one or two of them.

[19] The inconsistency in Paya's testimony is patent since he stated that Respondent "disappeared" only once and that was when Highpoint Hosiery left its Park Avenue location. He testified that Respondent resurfaced at Spencer Street and that he signed a new contract with Metropolitan at that address on March 31, 1973. Thus, if Paya did not "go to the shop for a long time" and did not know the name of the shop steward for that reason—because Respondent "disappeared"—he testified in effect that he had not known what was going on at the shop since 1973.

backtracked and stated, "I'm not sure, I have to look at my records to see it."[20] Counsel for the General Counsel pressed, "Isn't it a fact, that that means before you went to Mr. Jacobowitz in 1980, the contract was not being enforced?" Paya replied, "I told you before it wasn't enforced."

Finally, Paya was examined with regard to whether or not he collected dues. Paya stated that Local 413 collected dues "for a while," including, he thought, during the 1977 contract period. He added, however, that he did not actually know because his office handles dues collection and he would have to look at his records. However, the 1977 collective-bargaining agreement provides for dues to be deducted from employees' salaries, and Paya was served with a *subpoena duces tecum* requiring him to produce all records showing such deductions paid to Local 413 by Respondent, but Paya failed to produce the subpenaed records. Upon Paya's failure to produce the subpenaed records, counsel for the General Counsel moved for the taking of an adverse inference to the effect that no such records exist because employees had not paid any dues to Local 413. I grant the motion and so find.[21]

Jack Jacobowitz was similarly examined concerning the enforcement of the 1977 collective-bargaining agreement. With regard to dues, Jacobowitz testified that he did not know whether employees paid dues or Respondent contributed to Local 413. He stated that he might have records on these matters and, if so, would make such records available at a later date.[22]

With regard to the general enforcement of the 1977 agreement Jacobowitz testified that he could not remember whether the contract was enforced between 1977 and 1980. He stated that Paya was in the shop a couple of times—that he "just came around."

With regard to union security, Jacobowitz was asked whether his employees were told, in accordance with the contract, that they had to become Local 413 members after working there 30 days. Jacobowitz replied that he did not think so. When asked if any employees had been fired for not joining Local 413, 30 days after they began working for Respondent, Jacobowitz replied in the negative.

With regard to hours, Jacobowitz testified that, rather than the 5-day 8-hour-per-day, 40-hour week provided for by the contract, employees usually worked 4-1/2 days per week for a total of 36 or 38 hours because Respondent closed early on Fridays.[23]

Concerning the use of a bulletin board at the shop by Local 413, Jacobowitz testified that there was a bulletin board and that Local 413 did post notices thereon. He thus supported the testimony of Paya on this matter, but also stated that he did not look at the bulletin board and therefore did not know how frequently the bulletin board was used by Local 413.

Jacobowitz testified that after 6 months of employment, employees were entitled to a week's vacation and that, after a year's employment, employees were entitled to 2 weeks' vacation. This is more than that which is provided for by the contract.[24] Jacobowitz also testified that he gave paid holidays to his employees. He could not, however, remember if he gave New Year's Day as a holiday. He then stated that he gave whatever paid holidays required under the contract.

Jacobowitz was asked whether there was a shop steward at Southland. He replied that he did not think so but that he did not know. Jacobowitz did not appear to understand what a shop steward was or what his role might be. He also appeared confused by the term "grievance procedure." Eventually, he testified that if an employee had a work-related problem she would take her problem directly to him but if the problem was not resolved she would either take it to Local 413 or would quit. When asked if an employee had ever filed a written grievance, however, Jacobowitz replied that he did not know, adding that he could not remember any grievance ever coming to his attention. It would thus appear from Jacobowitz' testimony that there was no viable grievance procedure in effect at the shop during the life of the 1977 collective-bargaining agreement.

Although article 23 of the collective-bargaining agreement requires two 10-minute breaks each day, one in the morning and one in the afternoon, Jacobowitz testified that employees do not, in fact, get such breaks. In this respect the contract is admittedly ignored.

Although the contract calls for a $3-per-week wage increase after 60 days of employment[25] and semiannual increases of 7-1/2 cents[26] during the life of the agreement, Jacobowitz admitted that these provisions had not been implemented. Thus, the contract has not been in effect insofar as the wage provisions are concerned.

Sylvia Jacobowitz, who, as noted, is in charge of payroll, testified that employees are paid for holidays and receive double time for holidays worked. She admitted, however, that no separate notation is made on the payroll records to indicate that employees have received pay

[20] In an affidavit supplied by Paya to a Board agent, Paya stated that he was not sure whether the contract had been enforced between 1977 and 1980.

[21] Paya also admitted on the record that he discussed with Jack Jacobowitz in February 1980 that he had never received any dues from Respondent which by the contract should have been forwarded.

[22] The records provided are discussed *infra*.

[23] Jacobowitz at first testified that employees who wished to do so could complete their 40 hours on Sundays and if they worked over 40 hours they would be paid double time in accordance with the contract. Later, however, Jacobowitz testified that few employees took advantage of available Sunday work and that those who did so were not given double time as required by the contract. Jacobowitz' testimony on the subject was somewhat confusing.

[24] The 1977 labor agreement states that employees with 6 months and 1 year of employment are to receive 3-day and 1-week vacation, respectively.

[25] Sylvia Jacobowitz was personally in charge of the payroll records and made them all out weekly by hand. She testified, despite her obvious acquaintance with the payroll records and procedures, that she did not know if employees received an automatic wage increase after 60 days of employment. She stated that her father takes care of raises and tells her when to increase the wages of a particular employee but that she is unacquainted with when employees receive wage increases. She admitted that she was never instructed to give an automatic $3-per-hour wage increase to employees after 60 days of employment.

[26] Sylvia Jacobowitz disingeniously testified that she could not recall if employees received the 7-1/2-cent wage increase in November 1979 as per the contract.

for a holiday.[27] Indeed, the payroll records indicate, contrary to Sylvia Jacobowitz' testimony, that employees do not receive holiday pay as required under the contract. Moreover, although Sylvia Jacobowitz testified that employees who work over 40 hours receive time and a half for overtime worked as the contract provides, Respondent's payroll records indicate that only straight time is paid.[28] Thus, Sylvia Jacobowitz' testimony on these matters is discredited by Respondent's own records, and I conclude from these facts that all of her testimony must be subjected to serious question unless supported by credible documentation or independent corroborative testimony from other witnesses. Thus, although Sylvia Jacobowitz testified that employees, in accordance with the collective-bargaining agreement, receive paid vacations, she admitted that such payments are not reflected in the payroll records. She testified that employees on vacation would receive a regular paycheck with the number of hours worked left blank. Since no copies of these canceled checks were offered evidence, I conclude that such checks never issued and that Respondent did not pay its employees for vacations taken as required by the contract. The contract was not enforced in this respect.

Sylvia Jacobowitz testified that she could not recall if dues were deducted from employees' paychecks. She agreed, however, that, if in fact dues deductions had been made in accordance with the contract provisions, the amount deducted would be entered on the payroll records. However, though payroll records were subpenaed by counsel for the General Counsel and were provided during the hearing, those portions of the payroll sheets which would indicate the amount of dues deducted were not included in the records supplied. When this fact came to light, counsel for the General Counsel moved for production of the missing portions of the payroll sheets containing dues-deduction information. The motion was granted and Respondent was ordered to produce the missing portions of the payroll records. At this point in the hearing Jack Jacobowitz indicated that there had been no dues deductions and on that basis declined to provide the additionally subpenaed documents.[29] Since dues had admittedly not been deducted during the life of the 1977 agreement until the advent on the scene of Local 155 in February 1980, it is clear that the agreement had not been enforced in this respect until that time.

Respondent called no witnesses to testify at the hearing concerning the contractual relationship between Local 413 and Respondent and the enforcement of the 1977 collective-bargaining agreement, and all testimony tending to favor Respondent's position was introduced through Respondent's management[30] personnel or through Paya. Not a single employee was called by Respondent to testify concerning his or her enjoyment of benefits derived through the enforcement or administration of the 1977 collective-bargaining agreement. On the other hand, counsel for the General Counsel called several employee witnesses who testified credibly with regard to this matter.

Thus, Maria Baez, an employee of Respondent since August 5, 1979, testified that, until February 1980 and the appearance of Local 155, she was totally unaware of the existence of Local 413 and knew nothing of the 1977 collective-bargaining agreement. She had never paid dues to Local 413 nor authorized dues deductions from her wages. She received no paid vacation, paid holidays, or coffeebreaks. She did not receive the contractually scheduled wage increase in November 1979, the increase due her after 60 days of employment, nor any other wage increase. Though she worked overtime she never received time and a half. She denied that there was a Local 413 shop steward at the shop, and, since one never was introduced or even mentioned by name, I credit Baez' testimony concerning this matter. She was, of course, aware of no grievance procedure, since she had never heard of Local 413. She received no health or welfare benefits. Contrary to the testimony of Paya and Jack Jacobowitz, Baez denied that there was any bulletin board at the shop much less union announcements thereon. Prior to February 1980 Baez never saw Paya at the shop.

Carlos Caban, an employee of Respondent since January 10, 1980, testified that he received no paid breaks while employed by Respondent, and that, although he worked overtime and was initially paid time and a half for it during the first 2 weeks[31] of employment, he was subsequently told by Leibish Jacobowitz that thereafter he would only receive straight time. He thereafter declined to work overtime. Caban also testified that there was no shop steward or grievance procedure in effect at the shop, and that he received no health and welfare benefits.

Corina Malave, an employee of Respondent since June 1979, testified that she had never been a member of Local 413, had never even heard of Local 413 prior to February 1980,[32] and had known nothing of the existing

[27] Sylvia Jacobowitz testified that her father would tell her when she should pay an employee for a holiday but never told her on what bases he had decided which employee to pay holiday pay. I find it incredible to believe that her father would indicate to Sylvia by name the specific employees entitled to holiday pay rather than to tell her to simply pay holiday pay in accordance with the contract if, in fact, the contract was being enforced in this respect.

[28] When Sylvia Jacobowitz was asked to explain why a certain employee was paid at straight time for overtime, she replied that she may have made a mistake and then paid the named individual the difference by private check, which she does whenever she makes such mistakes. Counsel for the General Counsel moved to have these private checks produced. The motion was granted and an exhibit number was set aside to assign to the checks when received. The checks were never produced and, in accordance with the motion of counsel for the General Counsel, I draw the adverse inference that no such checks were ever issued and that Respondent did not pay its employees time and a half for overtime as provided for by the collective-bargaining agreement.

[29] Certain documents were nevertheless subsequently submitted. These will be discussed *infra*.

[30] Testimony was adduced by counsel for the General Counsel through witnesses examined under Sec. 611(c) of the Federal Rules of Evidence.

[31] The records support Caban to the extent that he was paid overtime at time and a half 1 week, then worked overtime at straight time for 2 weeks, but thereafter did not work any overtime.

[32] Though Malave claimed never to have heard of Local 413 prior to early February 1980, elsewhere in her testimony she stated that in January 1980 she discussed "the union" with her fellow workers. Thus, Ma-

Continued

collective-bargaining agreement between Respondent and Local 413. She was never told that she had to become a member of Local 413 in order to maintain her employment as the contract's union-security clause provides. Malave testified further that she had never received a paid vacation, paid holidays, paid breaks, the scheduled 7-1/2-cents-per-hour wage increase in November 1979, the $3-per-hour contractual increase after her first 60 days of employment, time and a half for overtime, nor health and welfare benefits. She testified that there was neither a shop steward nor a grievance procedure in effect at Respondent's shop.

Melba Ondina Rivas, an employee of Respondent since July 7, 1979, testified that she never heard of Local 413 during the entire 8 months of her employment there. No one ever mentioned Local 413 to her and she was unaware of the existence of the contract between Respondent and Local 413. While employed at Respondent's shop Rivas received no paid vacation, paid holidays, paid sick leave, breaks, scheduled wage increases either after 60 days of employment or in November 1979, or any health and welfare benefits. Rivas testified that while she was employed at Respondent's shop there was no union steward present there and no grievance procedure in effect.

Nestor Rivera, an employee of Respondent since January 1980, testified that no one from Respondent ever told him about Local 413, that he never became a member of or paid dues to Local 413, and that he never heard of its existence until February 1980. He also testified that while employed at Respondent's shop he never received paid sick leave, breaks, time and a half for overtime which he, in fact, worked, or health and welfare benefits. While Rivera was employed at Respondent's shop there was neither a shop steward present nor a grievance procedure in effect.

Thus, counsel for the General Counsel's employee witnesses fully and credibly testified to the complete absence of any administration, effectuation, or enforcement of the existing collective-bargaining agreement between Respondent and Local 413 over the entire period of their employment. As noted, Respondent offered no employee witnesses to counter their testimony.

The 1977 contract expired on November 1, 1980, yet Paya did not undertake negotiations toward a new agreement.[33] At the hearing he clearly stated his lack of any intention to do so. Jack Jacobowitz testified that no new negotiations have been undertaken with Local 413 toward a new labor agreement.

From the above-described record evidence, the testimony of witnesses, and documentation it is abundantly clear that until the events of February 1980, discussed *infra*, the 1977 collective-bargaining agreement between Respondent and Local 413 had never been administered, effectuated, or enforced. The Union had, over the life of the contract, insofar as its representative status is concerned, become dormant and therefore no longer represented the employees of Respondent at the time the events described below occurred. *Sweater Bee by Banff, Ltd.*, 197 NLRB 805 (1972).

C. *The Organizing Campaign*

Sometime in January 1980[34] certain of Respondent's employees discussed the need for a union at the shop. Unlike the individuals who testified at the hearing, some of these employees had at least heard of Local 413 because, according to Corina Malave, one or more of them, on this occasion, stated that they had attempted to call the Union[35] but that it never came. After hearing this dissatisfaction voiced Malave asked those present if they really wanted a union. When they assured her that they did, Malave replied that she would call Local 155.

On January 24, Malave called Local 155 and spoke with Ramonita Guzman, an organizer for that labor organization. She informed Guzman that her fellow workers at the shop were interested in having a union represent them. She gave Guzman the name and phone number of Maria Baez, one of the fellow employees with whom she had spoken earlier. Guzman promised Malave that she would call Baez and schedule a meeting. The same day Guzman contacted Maria Baez by telephone and a meeting was scheduled for Wednesday, January 30, at Baez' home. On the appointed date Guzman and a fellow organizer, Norman Lewis, visited Baez' home to discuss future plans. Guzman described to Baez the benefits of union representation, answered her questions, left leaflets and authorization cards with her, and obtained her signature on one of them. On Thursday, January 31, Baez called Guzman to schedule a union organizational meeting for Friday, February 1. Guzman advised Baez to invite other employees to the meeting. On February 1, the scheduled meeting took place at Baez' home. Present were Guzman and Lewis for Local 155 and 10 to 18 employees, including Malave and Baez. Guzman explained to those present the benefits of unionization. Questions were asked. All employees present signed cards, including one Carlos Caban. Additional cards were given to those present for further distribution, including to Carlos Caban, who gave some of them to other employees. Arrangements were made for a second meeting to be held on Friday, February 8. Between February 1 and February 8, Malave and Baez distributed union cards to other employees and told them of the benefits to be derived from union representation. Malave obtained signatures from all of the employees to whom she gave cards. Other employees, including Baez, as well as the organizer, distributed additional cards and discussed Local 155 favorably with the workers. Malave and Baez did some of their soliciting on behalf of Local 155 just outside the factory after quitting time as did Guzman.

lave's testimony appears to be not totally consistent. This factor has not been overlooked by me in making my decision. The January discussion between Malave and her coworkers is discussed *infra*.

[33] Paya testified that, after he learned that Respondent's employees were trying to get a new union in, he stopped enforcing the contract.

[34] Hereafter all dates are in 1980 unless otherwise specified.

[35] Probably Local 413. Yet, the record is not clear, and perhaps one of the employees had called another union to have it attempt an organizational drive. There is no indication that Local 413 was mentioned by name and it is quite possible that Malave did not know what union the other employees were talking about. Thus, Malave's testimony that she had never heard of Local 413 until February may well be true.

On February 8 the second employee meeting was held at Maria Baez' home. This meeting was very similar to the first but was attended by only seven or eight employees. Guzman again explained to those present the benefits of unionization. The employees present signed Local 155 authorization cards and some, Baez, Malave, and Caban, were given additional cards for distribution.

Baez testified with regard to the February 8 meeting that the meeting was scheduled for lunchtime, and that when she and the other employees left the shop to go to her home to conduct the meeting she noticed Jack, Beirel, and Leibish Jacobowitz and the cutter, who is a relative of the Jacobowitzes, standing outside the shop on different corners, one next to the factory, one across the street, and one near her home. The Jacobowitzes remained there observing as employees went into and left Baez' home. The Jacobowitzes were also noticed at their stations by Guzman, who stated that they were standing near the bus stop 2-1/2 blocks from the factory and that to get to Baez' home employees had to pass by the Jacobowitz family. Baez testified that she had never before seen the Jacobowitz family standing there as they were doing on this occasion. None of the Jacobowitzes testified concerning this incident nor denied that the purpose of their presence was surveillance of the union meeting.

Jack Jacobowitz testified that he found out about Local 155's organizing campaign when he saw union organizer Guzman distributing materials in the street, on the corner, in front of the factory at some time before the layoff which occurred on February 13.[36] He stated that he could not recall whether he also saw his employees distributing literature and did not look to see if they accepted the literature passed out by Guzman. Jacobowitz testified that he just got into his car and went home. The day after Jacobowitz first noticed Guzman distributing literature, one of Respondent's employees[37] brought Jacobowitz a Local 155 authorization card and it was at that time, he testified, that he learned that Local 155 was organizing. According to Jacobowitz, he did nothing about Local 155's attempt to organize his employees. In light of the credited testimony of Respondent's employees, discussed *infra*, however, I do not credit Jacobowitz' statement that he did nothing about Local 155's organizing campaign. Indeed, Jacobowitz testified openly that he did not want Local 155 to represent his employees. He stated that he contacted Local 155 after the picketing began and learned that it was demanding 18 percent of the wages, presumably in contributions from employers. He also testified that he learned from acquaintances[38] that Local 155 was a "bad union" and that he would "have to close down his place" if it succeeded in organizing his employees. Local 413 on the other hand, according to Jacobowitz, did not "want extra money from wages," just vacations, holidays, sick leave, and dues. Local 413 only wanted $2.50 or $5 per week per person. Though Jacobowitz testified concerning these particular amounts, he was unable to state precisely what the $2.50 or $5 per employee was for, health and welfare or what. On this basis Jacobowitz decided he did not want Local 155 representing his employees. Yet, having reached this decision, Jacobowitz testified that he did nothing to prevent Local 155 from obtaining representative status. I reject his testimony as untrue.

D. *Respondent's Reaction to the Organizing Campaign*

Between February 1 and February 8, Guzman visited the entrance to the plant both in the morning and in the evening to distribute materials and solicit Respondent's employees to join Local 155. When the Jacobowitz family discovered her presence, Jack, Leibish, Beirel, Sylvia, and her sister went outside the plant and stood at the corner about 10 feet from Guzman, and, as Guzman handed a leaflet to an employee, one of the Jacobowitzes would take it away and rip it up. Jack and Leibish would admonish employees not to speak to Guzman, telling them repeatedly that she was from the Mafia and that Local 155 was no good. This type of incident was witnessed, according to Guzman, by about 20 employees.

On February 7, at noon, Guzman boarded a bus with certain employees in order to talk with them. When the Jacobowitzes saw this, they, all five, boarded the bus with them. When Guzman got off the bus two stops down the line, all five Jacobowitzes got off the bus too. On other occasions Guzman witnessed the Jacobowitzes coming to an going from work, and on these occasions she noted that Jack, Leibish, and Beirel came to work in separate automobiles or together in a panel truck and did not take the bus.

I conclude that the harassment which took place on the corner in front of the factory was meant purposely to interfere with the Section 7 rights of Respondent's employees and that the Jacobowitzes boarded the bus for the same purpose, as well as to engage in surveillance of the organizational activity of said employees, all in violation of Section 8(a)(1) of the Act.

According to an allegation in the complaint, Local 413 and Respondent started to enforce the 1977 collective-bargaining agreement on February 5. Paya testified that it was in February 1980, before the layoff of February 13, that he went to Jack Jacobowitz and told him that there was still a contract in effect and he wanted it enforced. He testified further that it was after he made this request of Jacobowitz that he first learned that Respondent's employees were trying to get into Local 155. According to Paya, he attempted to get the employees to sign new authorization cards but obtained only a few signatures. The majority of employees advised him that they were not interested in Local 413 and would not sign his cards. After this rebuff, he stated he walked out and did not attempt to enforce the contract.

After testifying to the above description of events counsel for the General Counsel faced Paya with his affidavit in which he stated that some time after telling Jack Jacobowitz that he wanted to enforce the existing contract he returned to the shop and was presented with 62 signed Local 413 authorization cards by an employee

[36] Jacobowitz inconsistently also testified that he called Local 413 after his employees began picketing.

[37] Jacobowitz stated that he could not remember who this employee was.

[38] Jacobowitz refused to divulge any names but maintained that they were business associates.

whose name he could not recall.[39] Paya then admitted that the affidavit was correct, and that he had, in fact, received 62 authorization cards from someone at the shop, all of which were signed by employees. The 62 cards represented a substantial majority of Respondent's employees. Despite obtaining the apparent support of a majority of Respondent's employees, Paya testified, he nevertheless walked away because when he went to the shop he received "a very cold reception from the workers." The anomalous set of circumstances presented by Paya's testimony is in short that he suddenly, and for no apparent reason, decided to enforce a contract which had lain dormant and unenforced for years, but, after being presented with authorization cards from a vast majority of Respondent's employees, he decided to walk away and not to represent them or to enforce the existing contract. Before walking away from the unit, however, Paya told Jacobowitz, according to Paya's testimony, that he had never received any of the dues which, according to the contract, should have been deducted from employees' wages, and that dues would have to be deducted, as well as payments made to the welfare and pension fund.[40] Presumably, it was some time after this discussion that Paya discovered that the employees were not interested in Local 413 and he decided for that reason to walk away. I find Paya's testimony so inconsistent as to be totally incredible.

Jack Jacobowitz stated that it might be true that Local 413 tried to enforce the 1977 contract in February 1980 but he did not know. According to Jacobowitz, in January 1980 Paya presented him with Local 413 authorization cards signed by "a majority of the 100 to 120 employees." He, Paya, announced that Local 413 was the representative of Respondent's employees and that he was going to enforce the contract which had been signed in 1977. Jacobowitz testified that he agreed to recognize Local 413, as well as the contract signed in 1977, to collect union dues, and to contribute to the Union. Thus, Jacobowitz and Paya supported each other's testimony.

Several rank-and-file employees talked about Paya's presence at the factory in early February. Carlos Caban stated that on February 4, the Monday following the first meeting between Local 155 representatives and the employees, Paya visited the shop and talked to the employees, advising them that Local 413 was there representing them.[41] On February 6 Beirel Jacobowitz called Carlos Caban aside away from the other employees and told him that he had to sign an authorization card for Local 413. Jacobowitz added that if Caban did not sign the Local 413 card he would "have no more work." Caban refused to sign, telling Jacobowitz that he "had never seen any papers from Local 413" and did not know what benefits he would receive by belonging to that Union. Jacobowitz had Local 413 authorization cards with him at the time and gave one to Caban which Caban did not sign at the time.

The following day, February 7, a Thursday, when Caban arrived at work, he was called into the office where both Beirel and Sylvia Jacobowitz were present. Beirel told Caban that he had to sign a card for Local 413. Caban did so and dated it as well. When Beirel noticed that Caban had dated his card, he tore it up and gave him three more cards to sign, advising Caban to leave the cards undated. Caban signed all three and returned them to Beirel and Sylvia.

On February 11, according to Caban, at or about 8 a.m., he was receiving a delivery at the shop when Leibish Jacobowitz called him over to talk to him. He told Caban that he knew that he had signed a card for Local 155. Caban denied signing the card. Leibish stated that if the workers tried to bring in Local 155 he would have to close the factory. He added that Local 413 was giving good benefits.

Maria Baez testified that on Thursday, February 7, about 6 p.m. Beirel Jacobowitz called her home and told her that he did not want to see her, her daughter, or her mother working there anymore. Baez asked Beirel why she and her mother and daughter had been fired and he replied that he did not have to give her any reasons. Baez replied that he had to give her an explanation, that she was going to go to the shop the following day to get her check, and that at that time he would have to give her an explanation.

The following day, February 8, Baez went to the shop to pick up her check and she talked to Beirel Jacobowitz, who asked her what was happening. In return, Baez asked what was happening and Beirel asked her if she wanted her job back. Baez insisted on wanting to know why he did not want her on the job. Beirel, in reply, told her to wait for Leibish. When Leibish arrived Baez asked him what reason he had for firing her. Leibish replied that there was not much work. Baez contradicted him, saying that there was a lot of work. Leibish replied that someone had told him that she was trying to bring a union in. Baez denied this. Leibish told Baez that, if she wanted to come back to work, she should come back the following Monday with her mother and daughter but should not talk about any union. He added that, if Baez heard anybody talking about Local 155, she should report it to him. He also stated that the following Monday, February 11, a representative of Local 413 would call to talk to the employees.

The following Monday, according to Baez, Sylvia Jacobowitz called the workers into the office in small groups of threes or fours. When Baez entered the office in her small group she found Paya there talking about Local 413. In Baez' group of employees were two new employees who had just been hired. Paya told Baez and the other employees that someone was trying to bring in a union but that the factory already had a union, as well

[39] As will be seen *infra*, the cards were apparently supplied to Paya by Respondent.

[40] Paya inconsistently testified at one point that, after receiving the 62 authorization cards, he did not again speak with Jacobowitz. Elsewhere, however, he testified that this discussion concerning the necessity of deducting dues and making payments to the welfare and pension fund occurred after he received the 62 cards, and that it was during this discussion that he advised Jacobowitz that he wanted the contract enforced. He testified, again inconsistently, that thereafter the contract was enforced, only to contradict himself later, stating that it was not enforced.

[41] Maria Baez testified to having seen Paya for the first time at the shop about this time. Although Baez placed the first appearance of Paya at the shop as occurring on or about February 11, it is likely that it occurred on Monday, February 4. She did not speak to Paya on this occasion but he was identified to her by a coworker.

as a contract which still had a year and a half to go until it expired. He stated that no new union could come in under the circumstances. Baez replied that, if there was already a union in the shop, where was the shop steward and where were the benefits. Paya stated that there was no shop steward because the workers had not selected one and that, as far as the lack of benefits was concerned, he would have to investigate that matter with the owner. Baez then asked Paya how employees could locate the Union if they had problems with the boss or the foreman. Paya replied that any employee could contact him by telephone. Baez rejoined that the employees did not know either the telephone number or address of Local 413. Paya then advised Baez that he would return the following day to get together with all of the workers to elect a shop steward. According to Baez, this never occurred, although she did notice Paya in the shop 2 days later talking to employees.

After she had left the office after talking to Paya, Baez testified, Jack Jacobowitz saw her outside the office and called her over. He asked her why she had caused "all that trouble." She denied any complicity but Jacobowitz continued the conversation by asking her why she wanted a union when the employees already had a union. He told her that, if she brought in another union, he would have to close the factory. Baez replied that she had never heard anyone in the shop talk about any union. He then told her that if she wanted to continue to work there she would have to sign a Local 413 authorization card.[42] Baez replied that she would sign the Local 413 card the following day after Jacobowitz explained all of the benefits to her, but he insisted that she sign the card that day, and told her that before leaving that afternoon everyone had to sign a card. Later, at 5 p.m., when Baez was about to leave, she saw Jack and Beirel Jacobowitz at the exit door telling all the employees to sign cards. They ushered the employees into the office where Sylvia Jacobowitz had them sign authorization cards for Local 413. Baez noted that four or five employees went into the office where Sylvia was. She and her daughter were also called into the office for this apparent purpose, but were then called aside by Beirel Jacobowitz, who told Baez that it would be better if she and all of the other employees signed authorization cards for Local 413. He said that, if they did not do so, she, her mother and her daughter would all lose their jobs because they, the Jacobowitzes, would close the factory. He explained that he could do this because he had many other places where he could send the work.

Maria Baez and her daughter then went into the office where Sylvia was. There were already several employees in there. Sylvia had the cards on the desk, and, when Baez and her daughter entered the room, Sylvia gave each of them a card and told them to sign the cards but not to date them. Both Baez and her daughter complied with Sylvia's instructions. Baez noticed that the other employees present, about four in number, also signed cards.

[42] Jack Jacobowitz denied that he ever solicited any employees to join Local 413. I credit Baez' description of this incident.

A few days after Paya's visit and Baez' signing of the Local 413 authorization card, she was walking to work when Leibish Jacobowitz called her over to talk with her. He took her into the hall at the shop and told her that she should talk to the other employees and convince them that they should accept Local 413. He stated that he was going to give Baez a vacation, pay her overtime, give her additional benefits, and make her the shop steward in Local 413. He told her that if she wanted to stay home for 2 or 3 days she could do so and he would pay her for those days. He said that he would do this for Baez only and not for the other employees. Baez agreed to talk to the other employees as Leibish requested but did not do so.

Two days after Baez signed the card, Paya again visited the shop. While Paya was there Baez asked him if it was obligatory for one to sign a card against his will, adding that she knew this was against the law. Paya told Baez that no one was obligated to sign a card against his will. Baez thereupon told Paya that she wanted her, her daughter's, and her mother's cards back because they did not want Local 413 to represent them. Paya promised to bring Baez' card to her the following day. (He never did so.) Paya then told Baez that he did not have a contract with Jack Jacobowitz, although earlier he had told her that he did have such a contract. He advised Baez that he was trying to get Jacobowitz to give the employees benefits, and, once there was an agreement, Paya would sign the contract.

Employee Nestor Rivera credibly testified that sometime in early February Beirel Jacobowitz gave him four Local 413 authorization cards and told him to sign them. Beirel added that if Rivera did not sign the cards he would have no work. Rivera replied that he would sign the cards later. Two or three days later while just outside the office, Beirel again told Rivera to sign the cards and this time he did so. He also told Rivera to leave the date blank. Rivera complied.

Employee Melba Ondina Rivas testified that when she reported to work on the morning of February 13 she was ordered into the office by Beirel, who then told her, "You want to work, you must sign this card." Rivas became angry and told Jacobowitz that she did not want to sign the card because she did not like that Union. He then insisted that she sign the card, telling her that Local 413 was a good union. Sylvia, who was present, also told her to sign. She then signed the card against her will, stating, "I don't like this." She was then ordered into the shop.

Employee Corina Malave testified that on February 4 or 5 about 4 or 5 p.m. Beirel and Leibish Jacobowitz called her over and told her to sign a Local 413 authorization card because Local 413 was a good union for the employees because they would not have to pay much money and that Local 413 was also good for the Company. Malave said that she did not want a union. Jack Jacobowitz then arrived; Malave started to leave, but was called into the office by Sylvia and Rifka Jacobowitz, who told her to sign a card. They told Malave that her coworkers had already signed cards. Malave asked if she could take the card home and sign it later but Sylvia told

her that she had to sign it there in the office. Malave refused and Sylvia said, "O.K. Tomorrow we'll talk." Malave went home without signing the card.

On February 7, according to Malave, Beirel Jacobowitz changed Malave's work assignment from sewing collars to sewing sleeves. Since the change in jobs adversely affected her production Malave asked Beirel why he had switched her from collars to sleeves. Beirel replied by asking her if she had signed the Local 413 authorization card. Malave in turn asked if she had to do so. Beirel replied in the negative. Later, however, Beirel came back and again asked Malave if she had yet signed the card. When Malave stated that she had not done so, Beirel said that if she would sign the card he would put her back on her old job. Malave again refused and was kept on sleeves until February 12 when she was put back on her old machine doing still another job.

E. *The Deduction of Union Dues*

According to Respondent's records[43] it just began deducting dues from its employees' wages on behalf of Local 413 for the pay period ending February 10. The first deductions were actually made on February 13. Paya testified that he could not say whether checkoff authorizations were signed by Respondent's employees. Though dues-checkoff authorizations were among the documents subpenaed by counsel for the General Counsel, none were produced. In accordance with counsel for the General Counsel's motion I draw an adverse inference to the effect that no such documents exist.

When Jack Jacobowitz was asked if any of his employees had signed dues-checkoff authorizations, he replied that he did not know. He also stated initially that he did not know if dues were deducted. Later, however, he admitted that he deducted $2.25 from his employees' weekly paychecks. He stated that he began to do this after Paya told him that he was going to enforce the contract. Jacobowitz stated, however, that he never forwarded the dues to Local 413 because he wanted Local 413 to remove Local 155's picket line which was later established.

Certain employees also testified concerning dues deductions. Employee Nestor Rivera testified that Respondent deducted dues from his wages without consulting him. He stated that he had never signed any authorization permitting Respondent to deduct dues from his wages. Maria Baez similarly testified that Respondent took $2.25 from her February 13 check for dues to Local 413 and that she never signed any authorization for the deduction. Carlos Caban also testified that dues were deducted from his February 10 and 13 paychecks in the amounts of $2.25 and $1.50. He received both of these checks on February 13, the day he was laid off. Thus the $2.25 represented dues deductions for the full workweek ending February 10 and the $1.50 covered the period February 11-13. Caban denied that he never authorized the deductions. Melba Ondina Rivas testified in a like manner that dues were also deducted from her last two checks and that she had never authorized the deductions. Finally, Corina Malave also had dues deducted from her last two paychecks in the amounts of $2.25 and $1.50. Malave never signed a Local 413 union card much less a dues-deduction authorization.

The evidence is overwhelming that dues for Local 413 were deducted from the paychecks of Respondent's employees without Respondent's first obtaining authorization from the employees to make such deductions. By making the unauthorized dues deductions, Respondent violated Section 8(a) (1), (2), and (3) of the Act. *Welsbach Electric Corporation*, 236 NLRB 503 (1978).

F. *The Layoffs*

The complaint alleges that on February 13 Respondent laid off 26 named employees, as well as other employees whose names were unknown at the time. Since the issuance of the complaint payroll records came into counsel for the General Counsel which indicate that prior to February 13 Respondent had 98 employees on the payroll. These records indicated that as of February 24 Respondent employed only 18 employees.[44] These payroll records were placed in evidence and so indicate, as counsel for the General Counsel contends, that some 80 or more employees were, in fact, laid off on or about February 13. Respondent admits that the records are accurate and that whatever number of laid-off employees is indicated in the records is the true number of employees laid off.

As far as the reasons for the layoffs, Jack Jacobowitz offered the following statement to the Board agent investigating the case:

> On or about February 14, 1980, I temporarily laid-off about 80 employees because the spring season was finished and there was no work. My major accounts[45] were finished because the latest date of shipment was February, 1980. As we get new orders and Local 155 stops picketing, then I will hire back some of the employees who were laid off. The reason why I have to wait for Local 155 to stop picketing before I can rehire the employees is because the accounts cannot be delivered if the union picketing line is there.
>
> * * * * *
>
> The employees who are presently working are cleaning, packing and shipping knitgoods that have already been cut and sewed. I have not received any order since the union, Local 155, has been pick-

[43] Counsel for the General Counsel moved that an adverse inference be drawn if no records were produced to the effect that no dues were taken out of employees paychecks for any period of time until the first or second week of February 1980, at which time union dues were deducted for Local 413. Records received subsequent to the closing of the hearing and testimony at the hearing clearly prove counsel for the General Counsel's contention, thus making the drawing of an adverse inference unnecessary. The records, which purportedly cover all dues deductions, indicate that deductions were made only for the payroll periods ending February 10, 17, and 24, 1980.

[44] As of the date of the hearing Respondent, according to Jack Jacobowitz, employed 16 employees. He took back 7 or 8 employees and found jobs for 15 to 17 employees elsewhere.

[45] No business records were offered in evidence to support Respondent's economic defense.

eting the shop.[46] I am able to pick up orders, but I have not accepted the orders because picketing will prevent me from delivering the orders to the customers.

* * * * *

The accounts I was offered I told them that I could not take, handle them right now until I settle the union problems. I did not recommend any of these accounts to other employer[s]. However, if Local 155 does not stop picketing, I will recommend the accounts to other companies.

Paya testified that after he received word that Respondent had laid off the majority of its employees he called Respondent and talked with Jack Jacobowitz. The latter told Paya, "All my work is done outside, I send all my work out."

Several employees testified concerning the events of February 13. Maria Baez stated that about 5 or 10 minutes to 5 p.m., just before quitting time, Leibish and Beirel called all the workers together in groups. Leibish told Baez' group, numbering about 40, that there was no work—that work was slow. He added that the Company had been waiting for an order which never came and that maybe in 3 or 4 months there would be work.

With regard to the amount of work available, Baez testified that just prior to February 13 there had been a lot of cut work to be done but that this work was left in the hall and not brought in to be sewn. Later this available work was taken away and sent out, apparently to be sewn elsewhere. Baez witnessed the cut goods being taken out and loaded on trucks. Before February 13 there had been lots of work to do.

Carlos Caban testified that on February 13 Leibish Jacobowitz called him and two other workers aside about 4:45 p.m. and told them there was no more work, and that they should go and collect unemployment for 2 or 3 weeks after which time he would reopen the factory. Caban also noted that during the week just prior to February 13 there was less work being made available to the workers in the shop and more unfinished goods being shipped out to be sewn elsewhere.

Nestor Rivera testified that he also was laid off with the other workers on February 13. Rivera stated that just before the layoff there was a lot of finished work in the shipping department where he worked which still had to be shipped out. Rivera also testified that the Company at this time also shipped out unfinished goods to be finished elsewhere in larger quantities than usual.

Melba Ondina Rivas testified concerning the events of February 13 that, after her discussion with the Jacobowitzes when she was forced to sign the Local 413 union card, about 2 or 3 p.m., Beirel Jacobowitz announced that there was no more work. He said that he did not know how long there would be no work but that it could be about 3 months. He told the employees "to go away" and that they should go collect unemployment compensation. Rivas also testified that just prior to the layoff there had been a lot of work to be done.

Corina Malave testified that she was told of her layoff on February 13 by Leibish Jacobowitz. She was told along with about 10 other employees in a group that the employees had to go home because there was no work. She finished what little work she had left to do and went home. Malave, like other employees, testified that on Monday, February 11, she noticed that Respondent was taking a lot of work out of the factory into the street, unfinished sweaters in particular. Prior to that she had noticed only small amounts of unfinished sweaters being taken out.

G. *The Picketing*

It is alleged in the complaint in Case 29-CA-8096 that in February[47] 1980, shortly after the layoff, Respondent's employees began picketing in protest of Respondent's unfair labor practices. Respondent admits that picketing was undertaken, but not that it was in order to protest any unfair labor practices.

Ramonita Guzman testified that Local 155, as a result of the layoff of February 13, decided to put up a picket line to picket the unfair labor practices of Respondent. The picket line was established on February 20 after legal counsel had been obtained, and remained in effect until June 2. Four or five employees picketed every day as did Guzman. Maria Baez, Nestor Rivera, Melba Ondina Rivas, and Corina Malave so testified. I find from the credited testimony of the witnesses that the picketing began on February 20 and was for the purpose of protesting Respondent's unfair labor practices. The testimony of the witnesses as to the purpose of the picketing is supported by its timing—immediately following the February 13 layoffs and the filing of charges.

According to the complaint, on May 20 Leibish Jacobowitz offered to obtain work for one of the strikers, Corina Malave, at another shop if she would resign from Local 155 and cease striking, picketing, and otherwise participating in activities on its behalf. Respondent denied the allegation.

Malave testified that on or about May 20 Leibish Jacobowitz told her to go upstairs to the second floor. When she did so, Leibish told her to leave the picket line and, if she did so, he would obtain work for her. Malave asked where he would get her a job and Leibish replied that it would be with another company, not with Southland. Malave retorted that her job was at Southland, not at another company. Leibish insisted that he could get her better work with more money if she would just leave the picket line. Malave refused the offer. Since Respondent did not call any witnesses to refute Malave's credited testimony, I find that the incident occurred as described by Malave.[48] Similar incidents have been found violative

[46] Jack Jacobowitz testified that since February 1980 he has received orders. He also stated that he refused to accept certain orders because of the picketing, although he could have accepted them if he had chosen to do so.

[47] The allegation states that picketing began on February 14 but the evidence indicates, and I find, that it was initiated on February 20.

[48] Carlos Caban testified to a similar incident which though not alleged in the complaint tends to support Malave's testimony on this issue. Caban testified that one day in June Leibish Jacobowitz called him and told him that, if he would leave the picket line, Leibish would get him a job with another company. Caban replied that he would have to think about it. Later, however, about June 10, he accepted Respondent's offer and went to work at a shop on Hall Street.

of Section 8(a)(1) of the Act by the Board in previous cases and I so find here. *Skrl Die Casting, Inc.*, 245 NLRB 1041 (1979).

On June 5 Respondent sent to Corina Malave a telegram which stated: "Please come back to work immediately. Work is available today. Unless you come back to work, we will replace you with another worker." It is counsel for the General Counsel's contention that this offer was not unconditional in that it did not give Malave sufficient time to make a decision. In agreement with counsel for the General Counsel, I find the offer to be conditioned upon acceptance and return within an unreasonably short period of time and therefore not unconditional.[49]

After receiving the telegram Malave talked to a representative of Local 155 who told her that she should call Respondent if she intended to go back to work at Southland. She did so 3 or 4 days after having received the telegram. Leibish Jacobowitz told her that there was no work for the time being, and that she should call in 2 weeks. Malave agreed to do so but when she called 2 weeks later Leibish told her that there was no work. There were no further communications between Respondent and Malave. The totality of evidence with regard to Respondent's intent to rehire Malave convinces me that, although an offer of reinstatement was initially made because there was, in fact, a job opening, it was decided not to recall Malave because of her history of support for Local 155, including her picketing on its behalf.[50] The refusal to recall her under these circumstances is violative of Section 8(a)(1) and (3) of the Act.

Melba Ondina Rivas testified that when she came home from vacation in July she found waiting for her a telegram from Respondent which stated that she should return to work. After receiving the telegram she returned to the shop and spoke with Beirel Jacobowitz about having received it. Beirel replied that she should wait there awhile until he fixed a damaged machine. Rivas waited 2 hours. Finally, Beirel returned and said, "Ondina, I want you to work here, but I don't want any more problems with [the] union. You [are] good, I am good. No union, no problems." Rivas replied that it was "OK." Then Beirel said that it would take a long time to repair the machine and she should therefore leave and call back the following day. She did so, and three or four times after that, but each time Beirel told her that the machine had not yet been repaired. The last time she called was on September 10 at which time she received the same reply.

The uncontradicted testimony of Rivas is credited. Respondent offered no testimony in refutation. I conclude that Rivas made an unconditional offer to return to work but that Respondent failed and refused to offer her reinstatement. Beirel Jacobowitz' admonition to Rivas concerning her refraining from union activities convinces me that the failure of Respondent to recall her was based on her previous union activities. The failure to recall was therefore clearly in violation of Section 8(a)(1) and (3) of the Act.

[49] *Seminole Asphalt Refining, Inc.*, 225 NLRB 1202 (1976); *Michael M. Schaefer, an Individual Proprietor*, 246 NLRB 181 (1979).

[50] Respondent offered no other explanation.

IV. ANALYSIS AND CONCLUSIONS

A. *Case 29-CA-7765*

From the above set of facts it is clear that there existed a longstanding relationship between Paya and Respondent but little if any relationship which included representation of Respondent's employees by Local 413. Indeed, the succession of contracts appears to be nothing more than paper transactions designed to protect Respondent from having its employees receive legitimate representation from other labor organizations. Paya or Local 413, according to Jack Jacobowitz, in return for this protection, received $5 per employee per week between 1970 and January 1980, except for those periods during which Respondent had "disappeared."

When Local 155 suddenly appeared on the scene in late January and early February 1980, Respondent quite obviously contacted Paya to use the dormant contract as a bar to the organizational activities of that Union. Thus, I reject the testimony of Jack Jacobowitz and Paya that it was mere coincidence that brought Paya to Respondent's place of business to suddenly begin enforcing the contract, and find instead, in accordance with the probabilities of the situation, that Jacobowitz called Paya as soon as he found out that Local 155 was organizing and tried to get Paya to convince the employees that they should choose Local 413 rather than Local 155.[51]

In addition to interfering with the employees' rights to organize by seeking to have them join Local 413 instead of Local 155, Respondent's agents also engaged in surveillance of their activities and interrogated and threatened them concerning these activities under the circumstances described above. Thus, I find that Respondent interfered with the Section 7 rights of its employees and independently violated Section 8(a)(1) of the Act by taking Local 155 leaflets from employees and tearing them up, admonishing employees not to speak with the Local 155 representative, telling employees that the Local 155 representative was from the Mafia, keeping employees' union activities under surveillance, soliciting and forcing employees to sign Local 413 authorization cards, threatening employees with loss of employment if they failed to sign Local 413 authorization cards, giving the impression of surveillance of employees' union activities on behalf of Local 155, threatening to close the factory if the employees tried to bring in Local 155, interrogating employees concerning their activities on behalf of Local 155, interfering with the rights of employees to discuss their union preferences and activities, telling an employee to advise management if the employee heard anyone discussing Local 155, promising employees various benefits in return for talking to other employees in support of Local 413, and promising and granting employees benefits for abandoning their support of Local 155.

Inasmuch as the above-described independent 8(a)(1) violations occurred in the context of a campaign by Respondent to assist Local 413 at the expense of Local 155

[51] Jacobowitz admitted that he did not want Local 155 to represent his employees because it was too expensive.

in order to undermine Local 155's organizing campaign, I find that they are also violative of Section 8(a)(2) of the Act. *Southern Stevedoring Company Inc.*, 230 NLRB 609 (1977). Similarly, I find that Respondent violated Section 8(a)(2), (3), and (1) of the Act by commencing, on or about February 5, 1980, to put into effect and thereafter to enforce the long dormant collective-bargaining agreement executed by Respondent and Local 413 in 1977 in order to keep Local 155 from organizing its employees, and by deducting dues for Local 413[52] from the paychecks of its employees without first obtaining written authorization from them to do so.

I find further that Respondent violated Section 8(a)(1), (2), and (3) by laying off Maria Baez, Juana Baez, and the mother of Maria Baez because the former employee actively supported Local 155 and rejected Local 413, the labor organization favored by Respondent as the representative of the employees. I also find that the layoff of February 13 was not economically motivated but was the direct result of Respondent's fear that the Local 155 organizational campaign might be successful despite Respondent's unlawful efforts to have Local 413 belatedly return and "represent" its employees. The evidence is quite clear from the testimony of various witnesses that although there was plenty of work available Respondent chose to lay off most of its employees and send out unfinished goods to allied shops to be finished. Indeed, Respondent's agents threatened employees that they would close the shop and advised them that they could do so successfully because they could have the work done elsewhere. They told these employees that they would take this step, and, by all the evidence in the record, they carried out this threat, with Jack Jacobowitz' later admitting to Paya that he had done so. Finally, in his own testimony Jacobowitz stated that he had received orders since the layoff but refused the orders because of the Local 155 picket line, apparently forgetting that the picket line was set up only after the layoffs had occurred and quite obviously because of them. Thus, it is apparent that the layoffs of February 13 were not economically motivated, but were in retaliation for the union activity of Respondent's employees on behalf of Local 155 and in opposition to Local 413, to fulfill Respondent's threat to close the factory[53] if Local 155 were successful, and to keep Local 155 out. The refusal of Respondent to accept new orders while Local 155 was picketing was similarly an effort to destroy that Union's campaign to represent Respondent's employees. Respondent's claim that it rejected orders because it could not make deliveries through the picket line cannot be given any credence since the evidence is crystally clear that the picket line was not put up until after Respondent had begun to subcontract out its work and had laid off its employees to discourage unionization. Therefore, the layoffs, I find, were in violation of Section 8(a)(1), (2), and (3) since they occurred because of the activities on behalf of Local 155 of Respondent's employees and because of their opposition to Local 413.[54]

[52] Though Respondent apparently failed to forward these dues to Local 413, I find that this fact does not detract from the violation.

[53] Though Respondent is still operating the factory on a limited scale, the threat to close the factory was, in a sense, fully effectuated insofar as the laid-off employees are concerned.

B. *Case 29-CA-8096*

I have already found that the picketing which was undertaken by Local 155 at Respondent's place of business was initiated because of the unfair labor practices committed by Respondent, particularly the layoffs of February 13. I have found, in connection with this picketing, that Respondent offered employment with other employers to pickets if they would abandon the picketing, and I have also found that by so doing Respondent violated Section 8(a)(1) of the Act.

I have further found that, after offering reinstatement to employees Melba Ondina Rivas and Corina Malave, Respondent refused to put them back to work after they made unconditional offers to so return. I have found that Respondent's refusal to recall these employees was discriminatorily motivated, being based on their support of Local 155 and their opposition to Local 413, and therefore was in violation of Section 8(a)(1), (2), and (3) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with its operation described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (2), and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take appropriate and affirmative action designed to effectuate the policies of the Act. In particular, as I have found that employees Maria Baez, Juana Baez, and the mother of Maria Baez[55] were discriminatorily laid off, and that thereafter approximately 80 employees, including the same 3 employees, were discriminatorily laid off, I shall recommend that Respondent be required to offer them full and immediate reinstatement, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[56]

Having found that the deduction of dues without written authorization was violative of the Act and of employees' Section 7 rights, I shall recommend that Respondent be ordered to cease and desist from continuing to deduct dues from the wages of employees and further be ordered to make the affected employees whole by repaying to them the amount of dues deducted plus inter-

[54] *Southern Stevedoring Company, Inc.*, 236 NLRB 860 (1978).

[55] These three employees were temporarily recalled prior to the general layoff.

[56] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

est thereon, said interest to be calculated in the same manner as lost wages.

CONCLUSIONS OF LAW

1. Southland Knitwear, Inc. and Metropolitan Industries, Inc., are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 155 and Local 413 are labor organizations within the meaning of Section 2(5) of the Act.

3. By taking Local 155 leaflets from its employees and tearing them up, admonishing employees not to speak with the Local 155 representative, claiming the Local 155 representative is from the Mafia, keeping employees' union activities under surveillance, soliciting and forcing employees to sign Local 413 authorization cards, threatening employees with loss of employment if they fail to sign Local 413 authorization cards, giving the impression of surveillance of employees' activities on behalf of Local 155, threatening to close the factory if the employees tried to bring in Local 155, interrogating employees concerning their activities on behalf of Local 155, interfering with the rights of employees to discuss their union preferences and activities, telling an employee to advise management if the employee heard anyone discussing Local 155, promising employees various benefits in return for talking to other employees in support of Local 413, and promising and granting employees benefits for abandoning their support for Local 155, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By engaging in the above-described 8(a)(1) activities in the context of a campaign to assist Local 413 at the expense of Local 155 in order to undermine Local 155's organizing campaign, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(2) of the Act.

5. By commencing to put into effect and thereafter to enforce a long dormant collective-bargaining agreement executed by Local 413 and Respondent in 1977 in order to keep Local 155 from organizing its employees, and deducting dues for Local 413 from the paychecks of its employees without first obtaining written authorization from them, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(2), (3), and (1) of the Act.

6. By laying off Maria Baez, Juana Baez, and the mother of Maria Baez because Maria Baez actively supported Local 155 and rejected Local 413 as the representative of Respondent's employees, Respondent has violated Section 8(a)(1), (2), and (3) of the Act.

7. By laying off approximately 80 of its employees in order to prevent Local 155 from organizing them and in retaliation for their support of Local 155 and their rejection of Local 413, Respondent has violated Section 8(a)(1), (2), and (3) of the Act.

8. By refusing to recall Melba Ondina Rivas and Corina Malave because of their activities on behalf of Local 155 and in opposition to Local 413, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[57]

The Respondent, Southland Knitwear, Inc. and Metropolitan Industries, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in and activities on behalf of Knitgoods Workers' Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO, and assisting Local 413, Office and Professional Employees International Union, AFL-CIO, CLC, by:

(a) Taking Local 155 leaflets from its employees and tearing them up, admonishing employees not to speak with the Local 155 representative, telling employees that the Local 155 representative is from the Mafia, keeping employees' union activities under surveillance, soliciting and forcing employees to sign Local 413 authorization cards, threatening employees with loss of employment if they fail to sign Local 413 authorization cards, giving the impression of surveillance of employees' activities on behalf of Local 155, threatening to close the factory if the employees tried to bring in Local 155, interrogating employees concerning their activities on behalf of Local 155, interfering with the rights of employees to discuss their union preferences and activities, telling an employee to advise management if the employee heard anyone discussing Local 155, promising employees various benefits in return for talking to other employees in support of Local 413, and promising and granting employees benefits for abandoning their support for Local 155.

(b) Putting into effect and enforcing the 1977 collective-bargaining agreement between the Employer and Local 413.

(c) Deducting dues for Local 413 from the paychecks of employees.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer to all discriminatorily laid-off employees, including Maria Baez, Juana Baez, the mother of Maria Baez, and all employees laid off on February 13, 1980, immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of their terminations in the manner set forth in "The Remedy" section of the Decision herein.

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[57] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Reimburse all affected employees for dues deducted for Local 413 in the manner set forth in "The Remedy" section of the Decision herein.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in complying with the terms of this Order.

(d) Post at its plant in Brooklyn, New York, copies of the attached notice marked "Appendix."[58] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[58] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."